

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen Poellot	Team: Team # 7	CCRB Case #: 200701990	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/10/2007 4:10 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 8/10/2008	EO SOL 8/10/2008	
Date/Time CV Reported Sat, 02/10/2007 6:58 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/10/2007 6:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			044 PCT
2. POF Jeannette Rivera	03561	933259	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Danilo Mercik	16430	917127	044 PCT
2. POM Juan Mora	11885	920626	044 PCT
3. SGT Edson Garcia	03164	900340	044 PCT
4. POM Santos Rivera	09402	916540	044 PCT
5. POM Juan Ovalle	14054	916374	044 DET
6. POM Edwin Perez	12365	939206	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Jeannette Rivera	Abuse: PO Jeannette Rivera stopped § 87(2)(b)	
B. Officers	Abuse: Officers stopped § 87(2)(b)	
C.POF Jeannette Rivera	Abuse: PO Jeannette Rivera searched § 87(2)(b)	
D. Officers	Abuse: Officers searched § 87(2)(b)	
E.POF Jeannette Rivera	Abuse: PO Jeannette Rivera threatened to arrest § 87(2)(b)	
F.POF Jeannette Rivera	Force: PO Jeannette Rivera used physical force against § 87(2)(b)	

Synopsis

On February 10, 2007 at approximately 4:10pm, § 87(2)(b) and her boyfriend, § 87(2)(b) were allegedly stopped and searched by an officer identified as PO Jeannette Rivera and two additional unidentified officers (allegations A, B, C, D). § 87(2)(b) also alleged that PO Rivera threatened to arrest her and pushed her as she was telling her to leave (allegations E, F). Although PO Rivera was identified through a physical description and the 44th Precinct roll call, § 87(2)(b) and § 87(2)(b) provided non-specific and contradictory descriptions of the other two subject officers. PO Rivera and another possible subject officer, PO Danilo Mercik, both denied the incident occurred, and there was no police documentation of the encounter. § 87(2)(g) none had notations about the incident in their memo books. § 87(2)(b) and § 87(2)(b) told the CCRB that they could not identify the officers through photographs. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old black female, filed this complaint on the CCRB's call processing system on February 10, 2007 (encl. 4a-b), approximately two hours after it occurred. She was interviewed by Inv. Perry over the phone on February 22, 2007 (encl. 4a-b) and in person at the CCRB on March 9, 2007 (encl. 5a-c). § 87(2)(g)

§ 87(2)(b)

On February 10, 2007 at approximately 4:10pm, § 87(2)(b) and her boyfriend, § 87(2)(b) were walking home from a store located near the corner of § 87(2)(b) and § 87(2)(b). When § 87(2)(b) and § 87(2)(b) reached the side of § 87(2)(b) near the parking lot, a marked police car approached them and three uniformed officers [PO1, PO2, PO3] jumped out. PO1 was a light-skinned Hispanic female, short, in her 30s, with light eyes and a 44th Precinct insignia on her uniform. PO1 was identified by the investigation as PO Jeannette Rivera. PO2 was a white male [no further description] and PO3 was a Hispanic male with a muscular build [no further description].

PO Rivera shouted, § 87(2)(b) and walked towards § 87(2)(b) while PO2 and PO3 walked towards § 87(2)(b). PO Rivera searched § 87(2)(b)'s pants and jacket pockets and asked her if she had anything in her pockets. [During her initial statement on February 10, 2007, § 87(2)(b) stated that she told the officers to search her because "she had nothing to do with the crime."] § 87(2)(b) responded, "No, I don't have anything in my pockets. Why are you going in my pockets? Don't put nothing in my pockets!" PO Rivera said, "What is your preference of drugs? Did you just come out of § 87(2)(b) § 87(2)(b) stated that § 87(2)(b) is a drug-prone building nearby. § 87(2)(b) used to buy her marijuana from § 87(2)(b) but she stopped because her dealer was lacing it with crack cocaine.] At this time, PO2 and PO3 searched § 87(2)(b) going through his pockets and removing his jacket.

PO Rivera told § 87(2)(b) to pull her pants down. That day, § 87(2)(b) was wearing a pair of sweat pants and a pair of jeans over the sweatpants. § 87(2)(b) said, "Pull down my pants? It's freezing cold out here!" PO Rivera responded, "Do as I say or I'll arrest you. Come on § 87(2)(b) now, you know how this goes, I want you to cooperate." § 87(2)(b) pulled down her jeans but left her sweatpants still up. PO Rivera felt around inside the waistband of § 87(2)(b)'s sweatpants. PO Rivera explained to PO2 and PO3 that § 87(2)(b) had two pairs of pants on and asked if she should "go down in there (inside her sweatpants)." PO Rivera then said, "I'll tell you what, I'll go down in her bra." § 87(2)(b) was wearing two jackets at the time and PO Rivera opened up the front of the jackets and stuck her hand underneath § 87(2)(b)'s shirt, lifted her bra above her breasts, and proceeded to feel § 87(2)(b)'s breasts with her hands;

PO Rivera did this for approximately one minute. [In § 87(2)(b)'s initial statement on February 10, 2007, she indicated only that she was "searched" and did not specify the extent of the search.]

PO Rivera told § 87(2)(b) to take off her shoes and gloves. § 87(2)(b) replied, "Look, now you're going a little too far," and PO Rivera countered, "Oh, now you're telling me how to search you? You get down there and take them off." § 87(2)(b) said, "I can't take them off because then it's hard to get them back on if I take them off." PO Rivera then said, "Well I said you better do as I say, cooperate, or I'm gonna have you locked up right now." § 87(2)(b) then began taking off the army boots she was wearing and hurt her finger in the process. PO Rivera told § 87(2)(b) to bend down and take her socks off; she complied. § 87(2)(b)'s socks were off for about 30 seconds and she continued to tell PO Rivera that she "would hear about this," to which PO Rivera responded, "Yeah? Well I'll give you the number to hear about this! I'm from the 44th Precinct." PO Rivera then provided § 87(2)(b) with the precinct phone number. PO Rivera then pushed § 87(2)(b) back with both hands on her chest towards her building and said, "Go upstairs." § 87(2)(b) did not fall or feel pain when PO Rivera pushed her. PO2 or PO3 then told § 87(2)(b) to stay away from § 87(2)(b). § 87(2)(b) went upstairs and the police left the scene. § 87(2)(b) stated that she had never encountered PO Rivera, PO2 or PO3 before this incident and has not encountered them since.

During her interview, § 87(2)(b) stated that she believed the people in her building put an intercom in the elevator so that they could hear her conversations. She added that they steal her mail, listen to her phone conversations, and call the police on § 87(2)(b) and § 87(2)(b) because she used to smoke marijuana. § 87(2)(b) quit smoking marijuana approximately a month or two before this incident.

After follow-up calls were made to § 87(2)(b) to schedule a photo viewing, § 87(2)(b) left a voice message on August 1, 2007, stating that neither she nor § 87(2)(b) could recognize the officers from photographs.

Results of Investigation

§ 87(2)(b), a § 87(2)(b)-old black male, was interviewed at the CCRB on March 9, 2007 by Inv. Perry (encl. 6a-c). On February 10, 2007 at approximately 4:10pm, § 87(2)(b) and § 87(2)(b) were walking back from a bodega located near § 87(2)(b) and § 87(2)(b) in the Bronx. When they approached the sidewalk in front of their apartment building at § 87(2)(b) approximately five or six uniformed officers exited two marked patrol cars, approached, and told them to put their hands up.

Three or four male officers dealt with § 87(2)(b) and the one female officer (PO1, identified by the investigation as PO Rivera) approached § 87(2)(b) and consulted with her. PO Rivera was a short, Hispanic female, approximately 39 years old. The officers told § 87(2)(b) to keep his hands out of his pockets and asked him if he had anything in his pockets that might stick them. PO2 and PO3 then began searching through all of the pockets on § 87(2)(b)'s blue jeans and black, winter jacket; the officers did not remove anything from these pockets. PO2 was a Hispanic male and PO3 was a black male, both in their early forties. While searching § 87(2)(b) the officers asked him if he had any drugs on him. § 87(2)(b) denied having drugs and said he was just returning home from the store. The officers asked if he had been to a specific address in the area, but § 87(2)(b) told them he did not know anything about the address.

At this time, § 87(2)(b) was getting upset as she was interacting with PO Rivera. However, § 87(2)(b) was concentrating on his situation and did not recall what was said. At some point, § 87(2)(b) pulled down her pants and PO Rivera searched her waistband area. PO Rivera also ran her hands underneath § 87(2)(b)'s clothing, in the breast area.

After searching him, PO2 and PO3 told § 87(2)(b) to "go on about his business." § 87(2)(b) walked down the street while PO Rivera finished with § 87(2)(b). By the time § 87(2)(b) returned to § 87(2)(b) the officers had left the scene. At some point during the incident, the one or two

additional male officers who had initially approached § 87(2)(b) retreated to an RMP. § 87(2)(b) did not see PO Rivera push § 87(2)(b) at any point during the incident.

Officer Statements

PO Jeanette Rivera

PO Rivera, a § 87(2)(b)-year-old, 5'4", 140-pound Hispanic female with hazel eyes, was interviewed by Inv. Perry at the CCRB on June 7, 2007 (encl. 8a-b). On February 10, 2007, PO Rivera worked from 12:00pm to 8:35pm and was assigned to the 44th Precinct SNEU team. PO Rivera was in uniform and assigned to an unmarked vehicle (she did not recall the any description of the vehicle). PO Rivera did not recall who her partner was. PO Rivera did not have any entries in her memo book regarding this incident (encl. 7a).

PO Rivera did not recall the incident and denied stopping, searching, strip-searching in any manner, threatening to arrest, or shoving any civilians in front of § 87(2)(b) on February 10, 2007. She also denied questioning any civilians about visiting § 87(2)(b) PO Rivera was not familiar with § 87(2)(b) being a drug-prone location, adding that the entire 44th Precinct is a drug-prone location. On February 10, 2007, just prior to making an arrest at 5:00pm, PO Rivera was assigned to the "catch car." The catch car (also known as the apprehension auto), receives descriptions of individuals and their locations from the observation post and apprehends these individuals. PO Rivera did not recall the officer or officers working the observation post on February 10, 2007. While the name § 87(2)(b) sounded familiar to PO Rivera, she did not have any specific recollection of § 87(2)(b) PO Rivera did not know of a civilian named § 87(2)(b)

PO Danilo Mercik

PO Mercik, a 5'7", 190-pound black male, was interviewed by Inv. Perry at the CCRB on July 10, 2007 (encl. 10a-b). On February 10, 2007, PO Mercik was scheduled to work from 12:00pm to 8:35pm; however, he took "lost-time" and ended his tour at 4:05pm. PO Mercik was assigned to the SNEU team. He did not recall what his assignment was within the team (i.e. observation post, catch car, etc), which officers he was partnered with, or his motor vehicle assignment. PO Mercik believed that he likely would have had a stationhouse assignment, given that he was ending his tour early. PO Mercik did not have any entries in his memo book regarding this incident (encl. 9a-b). PO Mercik stated that he had no recollection of the incident and denied the allegations.

Police Documents

Searches for a SPRINT report or UF-250 report were negative (encl. 17a, 22b). A SPRINT index check found no radio calls in the vicinity (encl. 16a-c). Searches by the NYPD's MISD for any warrant checks or driver's license checks for § 87(2)(b) or § 87(2)(b) were negative (encl. 15). A search of the UF-250 log (encl. 17a) and BADS database (encl. 18a-e) found no stops or arrests at the time and place of occurrence for this incident.

However, a search of the BADS database was able to illustrate the area in which the 44th Precinct SNEU team was working on February 10, 2007 (see annotated map, encl. 3a, 18a-e). The SNEU team made an arrest at 3:15 p.m. approximately § 87(2)(b) north and § 87(2)(b) of the incident location, at § 87(2)(b) and § 87(2)(b). At 5:00 p.m., the SNEU team made an arrest approximately § 87(2)(b) of the incident location, at § 87(2)(b) and § 87(2)(b). The SNEU team made a third arrest at 5:45 p.m., approximately § 87(2)(b) of the incident location, at § 87(2)(b) and § 87(2)(b).

The 44th Precinct roll call (encl. 13a-m) indicates that Sgt. Edson Garcia (Hispanic male), PO Juan Ovalle (Hispanic male), PO Santos Rivera (Hispanic male) PO Danilo Mercik (black male), PO Juan Mora (Hispanic male), PO Edwin Perez (Hispanic male), and PO Jeannette Rivera (Hispanic female) were assigned to SNEU. There were no other Hispanic females working who could have been partnered with more than one officer.

The 44th Precinct command log (encl. 14a-j) contains no relevant entries.

The memo books of the 44th Precinct SNEU Team—Sgt. Garcia, PO Santos Rivera, PO Mercik, PO Mora, PO Perez, and PO Jeannette Rivera—contain no entries regarding the incident (encl. 11a-i). They do not indicate any assignments, with the exception of PO Mora, who was initially assigned to an

observation post at the beginning of his tour. PO Ovalle's memo book could not be located by IAB and the 44th Precinct.

Civilian CCRB and Criminal Conviction Histories

This is § 87(2)(b)'s second civilian complaint; § 87(2)(b)

. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

This is § 87(2)(b)'s first civilian complaint (encl. 2a). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer History

PO Rivera has no prior substantiated complaints in her four-year tenure with the NYPD (encl. 1).

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) and § 87(2)(b) described three uniformed officers as being involved in the incident. Both concurred that PO1, a light-skinned Hispanic female, short, in her 30s, with light eyes and a 44th Precinct insignia, stopped and searched § 87(2)(b). According to the 44th Precinct roll call, PO Rivera is the only female officer who could have been working with two male partners. PO Rivera, a § 87(2)(b)-old, 5'4", 140-pound Hispanic female with hazel eyes, fits the physical description provided by § 87(2)(b). Additionally, § 87(2)(b) was questioned about narcotics, and the SNEU team was documented as operating in the vicinity of the incident at the approximate time of the incident. Although PO Rivera denied having a recollection of the incident, a preponderance of evidence indicates that PO Rivera was PO1.

PO2 and PO3 were described as a white male and a Hispanic male with a muscular build by § 87(2)(b) and a Hispanic male and a black male, both in their early forties, by § 87(2)(b). The SNEU team was composed of five Hispanic males, one black male, PO Mercik, and a Hispanic female, PO Jeanette Rivera. PO Mercik was interviewed and denied recalling the incident, adding that his tour ended near the approximate time of incident (although it is unclear how accurate § 87(2)(b)'s time estimate was when she filed the complaint). The memo books of the Hispanic male officers did not have any notations regarding the incident, and there is no police department documentation of the incident occurring. When an attempt was made to schedule a photo array, § 87(2)(b) and § 87(2)(b) indicated that they would not be able to recognize any of the officers. § 87(2)(g)

§ 87(2)(g)

Disputed and Undisputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

During her interview, § 87(2)(b) § 87(2)(g) stating that people in her building steal her mail, tape her phone calls, file false police complaints, and placed an intercom in her elevator so that they could eavesdrop on her conversations all because she used to smoke marijuana. § 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Jeannette Rivera stopped § 87(2)(b)

Allegation B: Officers stopped § 87(2)(b)

Allegation C: PO Jeannette Rivera searched § 87(2)(b)

Allegation D: Officers searched § 87(2)(b)

Allegation E: PO Jeannette Rivera threatened to arrest § 87(2)(b)

Allegation F: PO Jeannette Rivera used physical force against § 87(2)(b)

As noted above, § 87(2)(b) and § 87(2)(b) § 87(2)(g) could not identify them through photographs PO Rivera and PO Mercik deny that the incident occurred, the other officers have nothing about this incident in their memo books, and there is no documentation indicating that the incident occurred. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: